

TOWN OF TIVERTON, RHODE ISLAND



GROWTH

MANAGEMENT

NEEDS ASSESSMENT FOR IMPACT FEE SCHEDULE AND ORDINANCE

June, 2007

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AND ORDINANCE**

1. SUMMARY

This report, the first of two phases of a Growth Management Program, will bring effective growth management in conjunction with the Town's Zoning Ordinance and Subdivision Regulations. This report is concerned with the capital needs of the Town of Tiverton for the propose of establishing an impact fee system, based on state enabling legislation and court cases governing impact fees. This report is designed to meet the forecasted facilities needs of the Town and to develop an Impact Fee Ordinance to offset the Town's planned expenditure of facilities for schools and other municipal infrastructure. The impact fee mechanism is designed to mitigate the costs of development on the Town's budget. This task will attempt to quantify the impacts in dollars so that a fee schedule may be established. The purpose will be to mitigate the costs of development so that new units will not unduly burden the Town.

It should be noted at the outset that impact fees are applied only to dwelling units, such as single family, duplex, and multiple family units that have more than one (1) bedroom which are deemed to have an impact on the Town's infrastructure, such as schools. This means that building permits for any type of remodeling, additions, or new construction for nonresidential uses would have no impact fees at all.

Given that the Tiverton School Department is in the midst of a major capital and infrastructure improvement program for its schools, based on documented needs for such improvement, this impact fee needs assessment report will deal primarily with schools. Other infrastructure needs are identified but the estimated costs are not sufficient to justify impact fees at this time. At a later date, these other municipal capital costs may be added as an amendment to this report. The second phase of Growth Management will seek to establish growth limits in response to the existing and forecasted growth trends.

There are many models for impact fees and generally include the following elements:

1. Compliance with State Enabling Act – RIGL Title 45 Chapter 45-22.4.
2. Capital Improvements Program – Establishment of a program to use such fees to offset municipal costs of new development. The Tiverton Elementary School Facilities Comprehensive Study, published on January 26, 2004 will serve as a source for School Department capital needs.
3. Establishment of Service Area – The service area is town-wide.
4. Calculation of Impact Fees – This is based on the cost of the actual capital improvement. It is not an exaction to supplement the Town's operating budget.

5. Imposition of Impact Fees – This will be established by ordinance, in compliance with state law.
6. Collection of Impact Fees – Since fees are not treated as ordinary revenue (such as taxes), there must be a separate collection instrument and deposit of fees. The Town Treasurer is the collection agent, and provisions have to be made to make sure that money will be spent in accordance with the impact fees ordinance.
7. Appeals – Provisions are available for an appeals process whereby aggrieved property developers or homeowners can appeal decisions by the Town in imposing and collecting fees.

2. PURPOSE

The reason for requiring development impact fees is that growth is costly to the Town. With every new subdivision, new homes are built, more families move in and more children must be educated. It also means that more residents need more recreational facilities and more people have to be protected by the police and fire departments. In addition, more people mean more roads that must be either upgraded or constructed, which also require proper drainage systems. As the Town grows, the need for open space and conservation of natural resources becomes more acute.

In short, growth has a hefty price tag. The question is: *How do you fairly allocate the cost?*

Of course, each homeowner is required to pay property taxes that the Town uses for education, public works, public safety, and general government expenses. But, on a per capita basis, municipal costs of services tend to outstrip the revenue generated by single family, duplex, and multiple family (more than one bedroom) dwelling units. Fiscally speaking, houses lose money for the Town. Property taxes are based on a fundamental principle that the tax levy must be as fair and equitable as possible. Real estate taxes are based on the assessed value or income stream of the property and not on the actual cost to serve the occupants of the property. The property tax on a house does not vary whether or not the occupants have children attending the public school system. Many towns try to balance their tax base by encouraging commercial and industrial land uses to offset the high cost of providing services to residents.

Another way to offset the cost of growth is to shift the burden of paying for new facilities onto new development. The concept of the “Impact Fee” is a method of spreading the cost of facilities from the Town as a whole to those who immediately benefit from growth.

A. Rationale for Impact Fees

The rationale for impact fees has its roots in the earliest forms of zoning dating back to the 1920s when developers subdivided large tracts of land outside the central cities and then expected government to simply step in and pay for all the services and associated costs of constructing facilities. Zoning was the first step in a series of regulatory controls that gave municipal government the tools to control costly and unbridled growth. However, zoning by itself cannot anticipate the timing of development. Hence, local government turned to growth management plans and ordinances to regulate the rate of growth.

In the prosperity that followed the end of the Second World War, suburban development accelerated at a rapid pace. Most municipalities were content to rely on zoning and subdivision regulations to control growth, in part because of large subsidies from state and federal sources to pay for the costs of growth. That is to say, the cost of development continued to be borne by taxpayers at all levels. Local government was able to fund educational, public safety and other municipal facilities with general obligation bonds which were paid for by the residents. These costs were often supplemented by state assistance for many municipal functions, including state aid to education. In addition, the federal government had a major role in funding and defraying the cost of local infrastructure that includes massive central city type projects such as urban renewal, public sewer and water systems, road projects and the like. Perhaps the largest federal assistance comes in the form of our interstate highway system. Starting in the 1950s and continuing to this day, the interstate highway system has contributed as much to suburban sprawl as any other single act of government.

By the 1970s and 1980s, federal assistance for local infrastructure projects started to dwindle. Revenue sharing and block grants replaced categorical grants that reduced the overall share for municipal buildings such as town halls, libraries, public works facilities and schools. As for roads, the interstate system is essentially complete in this region and now the emphasis is on replacing worn-out bridges and upgrading roads. There is less money today for municipal public works than there was twenty or thirty years ago.

Municipal government must look other means of spreading the costs of growth more equitably among existing and future residents.

B. Existing Forms of Development Exactions

Some forms of impact exaction already exist. Subdivision developers are required to build roads to meet the Town's standards for road construction. These include proper drainage and sometimes the infrastructure to support the new subdivision. Dedication of open space and other installation of betterments are not uncommon any more. Cluster subdivisions require open space in perpetuity. In many cases, developers are required to correct potential traffic problems including the installation of traffic signals or widening access roads to serve new subdivisions. But these forms of non-monetary exactions are site specific. Impact fees are exactions that may be used for town-wide benefits.

Impact fees as a method of financing local facilities is not new in this country. It gained popularity as communities were faced with rapid growth and dwindling state and federal dollars to pay for public facilities and turned to creative means to raise money without overtaxing existing residents. The usual stated objectives for impact fees are:

1. Shifting capital financing burden to new development,
2. Pacing new development with new facilities, and
3. Using impact fees for the betterment of existing and future residents.

From the developers' perspective, impact fees raise the cost of doing business and ultimately the fees are passed on to the future buyers and occupants of new homes. However, a strong and growing market for housing can ameliorate the extra cost of impact fees, especially since the value of the property is expected to appreciate in the future. Along with growth, Tiverton residents also experience a rise in their property values that,

in many cases, is significant. Amid rising wealth, the fee becomes negligible and the Town's existing residents are not burdened with having to pay all the costs of facilities to support new residents.

On the other hand, a weak market for housing may have the opposite effect. During an economic recession, the impact fee may become burdensome on the new owner who may take much longer recoup the cost. Also the higher cost of the property will make it less affordable and may dampen the market for new homes. Therefore, in devising impact fees, the Town must be both fair and flexible. The Town must be fair, in applying the fee equitably; and flexible, in being able to adjust the formula or the fees in response to economic cycles.

The message is that exacting on-site betterments and impact fees are used to improve the quality of life, sustain natural resources and maintain high educational standards for all residents. Such improvements provide added value to the community at large and also to individual properties. The knowledge that the Town's objective is to sustain high livability standards will surely pay dividends that will outlast the initial outlay of the impact fee. Any town that does not pay this kind of attention to livability standards, does so at its peril, for the quality of life will surely diminish as facilities are not expanded or renewed to keep pace with anticipated growth and demand for services.

The key to formulating an impact fee system is that it is fair. The fee system must conform with the state enabling act and also to recent relevant court decisions to successfully withstand legal challenge.

C. Enabling Legislation

Rhode Island General Laws § 45-22.4-1, et seq. provides enabling legislation to govern the imposition of impact fees for towns like Tiverton. There are several requirements that must be incorporated in any new ordinance that may be adopted by the Town. This report is one of the requirements, and the results will be to ensure full compliance with the law. While the entire text of the enabling act can be found in Appendix A, the major points are summarized below:

1. § 45-22.4-2 requires that the state legislative findings and intent must be incorporated in the local ordinance.
2. § 45-22.4-3 provides several definitions that must also be incorporated in the ordinance. Among other things, this section defines the term "public facility" to include school facilities. This is important because the Town's use of impact fees will concentrate on the schools, although other facilities are also included.
3. § 45-22.4-4 provides for the calculation of impact fees, which also includes the preparation of a *needs assessment* for the type of public facility for which impact fees are to be levied. The needs assessment is required to identify levels of service standards; projected capital improvements needs, and distinguish existing needs and deficiencies from future needs. This report will serve the purposes of this section, which also requires that this report be adopted by the Town Council.
4. § 45-22.4-5 provides that the collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the fees. There are also provisions that mandate:

- Impact fees must be deposited in a special proprietary fund;
 - Within eight (8) years of the date of collection, impact fees shall be expended or encumbered for the construction of public facilities; and
 - Impact fees shall not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure.
5. § 45-22.4-6 provides that impact fees must be refunded with accrued interest if such fees are not expended or encumbered within eight or twelve years.
 6. § 45-22.4-8 provides that the adoption of impact fees shall be by majority of votes by the Town Council, in accordance with the Council's procedure to adopt town ordinances.

In addition to enabling legislation, the courts have shaped the form of a legally defensible impact fee program. The U. S. Supreme Court provided the definitive principle for impact fees in *Nolan vs. California Coastal Commission*. Simply put, there must be a close and obvious relationship between the fee and the purpose it serves. For that reason, this needs assessment and subsequent actions by the Town must document the need for new or expanded facilities, establish a reasonably accurate anticipated growth costs to the Town, and the impact fee must be related to the need and projected cost for capital facilities.

There is a need to document the Town's need for facilities and the added cost that each new unit of development is likely to draw from the Town. However, unlike the growth management ordinance (in the next phase) that will establish a growth cap, the impact fee system will impose a new fiduciary responsibility on the Town to handle the collected fees in the manner consistent with their purpose, in compliance with state law and local ordinance.

3. TIVERTON'S CAPITAL NEEDS

Tiverton's population was 15,260 in 2000, an increase of 6.6 percent from the 1990 population of 14,312.¹ Table 1 below shows the population growth from 1950 to 2000, a period in which the population nearly tripled. Tiverton experienced its greatest population growth in the decade 1950-1960, when population increased by almost 70 percent. This was a trend typical of communities in the post World War II years. In the decades after 1960, growth slowed, but it is expected to continue at steady levels through the next two decades.²

Population growth data from 1950 are presented below:

TABLE 1
Tiverton Population Growth

Year	Population	Percentage Change
1950	5,659	
1960	9,461	67%
1970	12,559	33%

¹ US Census 2000 and 1990.

² *Tiverton Comprehensive Plan*, 2006, Page 8.

Year	Population	Percentage Change
1980	13,526	7.7%
1990	14,321	5.9%
2000	15,260	6.6%

Source: Statewide Planning Program.

Population Projections

The Rhode Island Statewide Planning Program prepares population projections to the year 2030. The prediction is that Tiverton's growth will continue at about 10 percent over a 30-year period. By 2015 the population is expected to grow to 16,006; and by 2030 it is expected to reach 16,841. The growth rate is attributed to an aging population and decreasing family size.

The continued growth in new housing will increase this population expansion further. For example, in 2004-2005, subdivision applications before the Planning Board, in various stages of review, suggest that about 230 single family housing units will be added in the next few years.

Table 2 below indicates the number of recent or pending residential subdivisions and land development applications.

TABLE 2
Recent or Pending Residential Subdivisions and Land Development Applications

Name	Number of Lots/Units	<u>Affordable Units</u>	Stage of Review
Bourne Mill	267	<u>80</u>	Master Plan Approved
Harbor Ridge	16	<u>*2</u>	Master Plan Approved
Watuppa Plantation	14	<u>*1</u>	Preliminary Plan Approved
Bayview	50	<u>12</u>	Master Plan Approved
Cottrell Farms	61	<u>10</u>	Final Plan Approved
Leger Estates	9	<u>*1</u>	Concept Plan
Sandy Woods Farm	71	<u>50</u>	Master Plan Approved
Faye's Trees	8	<u>*1</u>	Preliminary Plan
Delia Lane	16	<u>*2</u>	Master Plan Approved
Winterberry Woods	35	<u>4</u>	Final Plan Approved (8/08/06)
Bliss Homestead	9	<u>1</u>	Final Plan Approved (8/08/06)
Total	556	<u>164</u>	

Source: Tiverton Planning Department, June 15, 2007.

* Where information was not readily available, a 10% affordable percentage was used as per Article 22 of the Tiverton Zoning Code.

Current information on the Bourne Mill indicates the following breakdown:

53	Affordable Apartments
27	Affordable Condominiums
102	Market Rate Apartments

85 Market Rate Condominiums

53 of the market rate apartments were listed as 1 bedrooms
 53 of the affordable apartments are listed as 1-2 bedroom units.

No information was available on the number of 1 or 2+ bedroom condominiums.
 The following is information that was provided as part of a fiscal impact study on the Bourne Mill by consultant Randy Gross on September 25, 2006:

Housing Type	Units	Yield	Pupils
Market Condominiums	85	0.066958	6
Affordable Condominiums	27	0.067088	2
Market Rental	100	0.065071	7
Affordable Rental	53	0.067023	4
Total	266		18

Source: Tiverton Planning Department, June 19, 2007.

Of the 556 Lots / Units that are in various stages of approval, 230 are for single family dwellings. In addition, the Villages of Mount Hope Bay were approved for 290 units of age restricted housing condominiums. Those were to be built in various phases. To date, 144 Certificates of Occupancy have been issued. Due to the housing market, the developers do not plan on constructing any more units at this time.³

Although many of Tiverton's ongoing residential developments are in the "over 55" category the more recent subdivision activity represents a potential increase in the school age population.⁴

The table below indicates the number of new residential housing permits.

TABLE 3
New Town Wide Dwelling Units by Fiscal Year

FY	Single Family	Condo*	Manufactured Homes**	Total
1998-1999	26	0	0	26
1999-2000	49	0	0	49
2000-2001	49	0	63	112
2001-2002	48	0	27	75
2002-2003	69	48	36	153
2003-2004	42	42	12	96
2004-2005	49	44	10	103
2005-2006	32	15	2	49
2006-2007	33	6	4	43
Average	44	17	17	78

* Condominium Units are for Starwood's development with the exception of 5 units in FY 2003-2004.

** Manufactured Homes are for the Elderly Community known as Countryview Estates.

Source: Gareth Eames, Tiverton Code Enforcement, June 14, 2007.

³ Tiverton Planning Department, June 15, 2007.

⁴ Tiverton Comprehensive Plan, 2006, Page 10.

For the purposes of this needs assessment, only the single family, duplex, and multiple family dwellings with more than one (1) bedroom have an impact on the school's infrastructure and the need to meet the needs of a growing population. It appears that for the past nine years, the Town was issuing a high of 69 single family permits and a low of 26 permits per year or an average number of 44 single family permits per year.

Since the Town is embarking on significant capital improvements for its school facilities, an impact fee system is justified and can be implemented immediately. Once the fee system is in place for schools, the Town may consider Library, Fire Station, Police Station, Public Works Garage, and Open Space and Recreation Facilities (not necessarily in that order).

Each one of these is described below:

A. Schools

Tiverton's School District includes three operating elementary schools, (Pocasset, Fort Barton and Ranger), the Tiverton Middle School and the Tiverton High School. The School Department consists of 194 teachers and 45 non-certified support staff. Although it varies somewhat from year to year, the educational system accounts for about two-thirds of the Tiverton annual budget.

Budgetary constraints led to the closing of Nonquit Elementary School in 2003, with those students assigned to Fort Barton and Ranger. The three remaining elementary schools have little further available capacity. The Middle School and the High School are also nearing full capacity. The information in Table 4 below provided by the School Department shows enrollment for the 2004-05 school years, and includes an estimate of percent utilization and additional capacity for each school.

TABLE 4
School Enrollment, Capacity and Percent Utilization, 2004-05

School	Enrollment (6/2/05)	Capacity 2007	Percent Utilization	Excess Capacity
Pocasset	277	320	87%	43
Fort Barton	206	250	82%	44
Ranger	226	250	90%	24
Middle School	698	850	82%	152
High School	745	850	88%	105
Total School System	2,152	2,520	85%	368

Source: Tiverton School Department, updated 2007.

The table below shows school enrollment during three different years separated by a decade each, as well as the 2004-05 enrollment figures. It indicates that over a long period of time enrollment has been relatively stable, although in recent years while overall enroll-

ment is declining, the number of high school students is increasing. The School Superintendent reports that enrollments over the next several years are projected to grow slowly.

TABLE 5
Historical School Enrollment

	K-4	5-8	9-12	Total
1981-2	744	850	926	2520
1991-2	811	646	578	2035
2001-2	788	779	652	2219
2004-05	709	698	745	2152

Source: Tiverton School Department.

Following the rejection of a bond issue in 2002 to combine the four elementary schools into a new building on a single site, the Tiverton School Committee commissioned a study of the town's elementary schools to determine the cost and advisability of rehabilitating the elementary schools, including Nonquit School in south Tiverton. The town's elementary schools were built between 1925 and 1952 and renovated in the 1950's and 1970's. They do not meet the current standards of the Rhode Island Department of Education, which require that there be 90 square feet of space for each student in the classroom and that provisions be made for special education classes, nor are they all handicapped accessible as required by the American Disabilities Act. In addition, classrooms once available for teaching have, of necessity, been assigned for computer use. The study estimated the cost of rehabilitating four elementary schools to meet state standards at \$9 to \$10 million. The School Committee recommended instead to renovate "as new" and enlarge Fort Barton and Pocasset Schools, and to replace Ranger with a new elementary school on property north of the current high school. This required issuing a bond of approximately \$30.7 million, which was approved by the voters in the fall of 2004. Construction is expected to be completed on all schools by August 2008.

In November 2002, the voters approved a \$3.7 million bond to improve the aging high school, built in 1966. Construction began in the spring of 2005, and work to High School facility was completed in November 2005. Improvements include expansion of the guidance area, upgrading of science labs and improvements to the soccer-football fields. The town is to be reimbursed by the State of Rhode Island for 30% of the total cost of each project.

On January 26, 2004, the Town received its "Tiverton Elementary School Facilities Comprehensive Study."⁵ This study and subsequent analyses and recommendations by the Tiverton School Department will serve, along with this needs assessment, to fulfill

⁵ *Tiverton Elementary School Facilities Comprehensive Study*, by Jeter, Cook & Jepson, Town of Tiverton, January 26, 2004.

the requirements of RIGL § 45-22.4-4 that projects capital improvements needs of the school system and distinguish existing needs and deficiencies from future needs. The study recommended a so-called “3 Schools” option that was favored by the School Committee. It included two renovations and expansions at Pocasset and Fort Barton and a new school at the High School site. Each school was to have a capacity for 330 students or 990 in total. The original cost was projected at \$38.5 million but due to bonding limitations, the School Committee submitted a proposal for \$30.7 million which was approved by the Town Council. The state will reimburse the Town 30% of the cost of the project.⁶

The cost to the Town will be \$21,490,000. The overall cost is \$30,700,000, but the State of Rhode Island will reimburse the Town \$9,210,000, leaving the Town’s share to be \$21,490,000.

In November 2004, the Town approved a \$30.7 million bond issue for schools. The funds would be allocated as follows:

1. Build a new elementary school to accommodate 300 to 330 children located close to the high school. It would replace Ranger Elementary School which will no longer serve as a school. Cost approximately \$10,000,000. The project is awarded to O. Alhborg & Sons, Inc. Project scheduled for completion August 2007.
2. Major upgrading for Fort Barton School at an approximate cost of \$10 Million.
3. Major upgrading for Pocasset School at an approximate cost of \$10 Million.

B. Library

Tiverton’s library services consist of the Essex Library on Highland Road and the Union Library, located in a historic building abutting the Tiverton Four Corners historic area. Union is owned by the Union Library Association, and is rented annually to the Tiverton Library Board.

Essex and Union together provide about 3,800 square feet of library space to a community which has grown considerably. Due to fire regulations, Essex Library is currently restricted to serving no more than 30 patrons at one time, which requires that all library programs be held in outlying facilities. In accordance with state standards which take into account present and future needs of the community, a new library would require an area of approximately 35,000 square feet. This would include public meeting space, study rooms and staff work space and room to accommodate special collections.

Although the Essex Library is valued as a historic building, its location on ledge outcropping precludes expansion. Current estimates of \$350 per square foot of construction would result in an overall cost of \$12,250,000. The State of Rhode Island would reimburse the Town up to \$3,500,000, leaving the Town with an \$8,750,000 cost. These do not include land costs, which are unknown at this time. The State reimburses the Town 50% of land costs. The two sites are being considered are Bulgarmarsh and Stafford Road.

⁶ Tiverton School Department.

Failure to improve the library facilities will result in the loss of state funding, as well as membership in the CLAN (Cooperating Library Automated Network) system which permits inter-library loans within the state, and access to the state's databases.

C. Fire Station

As of 2006, the Fire Department will operate its three fire stations with a staff of 32 full-time firefighters, plus the Fire Chief and a civilian secretary. The town no longer has the assistance of volunteer firefighters. The station buildings are in need of long term repair and maintenance, and many town residents and officials feel a new fire station is needed, preferably as part of a combined police and fire complex. An ideal location would allow for the consolidation of two fire stations while ensuring that industry accepted safe response times can be met.

A new station should be of sufficient size to provide adequate office space for the entire organizational structure, and adequate room for front line and reserve apparatus. There is a desire for a ladder company or a specialized fire apparatus to access the condominiums in the Villages at Mount Hope Bay and the Sakonnet Bay Manor, as well as the numerous older two-story buildings in the north end of town; presently such equipment has to be requested from Fall River or Middletown.

The Fire Department also manages the emergency rescue service, which consists of two rescue vehicles. The dispatching system put into place for the Police and Fire Departments in 2004, as well as a state-wide 911 system which identifies the locations of 911 calls, have increased both departments' efficiency in responding to emergencies. The town currently bills for rescue service.

It is the intention to consolidate all existing stations into one main station. The existing three stations are as follows:

1. Station # 2. This is a 50 year old structure that cannot currently accommodate fire apparatus and does not meet current NFPA codes. The intention is to close this facility altogether.
2. Station #3 on Stafford Road. This is the old communication building. The building has serious problems and the intention would be to close the building altogether as well.
3. Eastern Road # 4. This is also an old facility and is not adequate. It does not have any rear access and there are serious questions regarding crew quarters and service facilities for firefighters. The intent is to keep it as a truck and ambulance facility.

The need is for an entirely new station that would be located near Route 24 area. The new facility should include classrooms for training and proper crew quarters.

D. Police Station

Law enforcement and protection of persons and property is provided by the Police Department's 28 member enforcement team, supplemented by 12 civilian employees, including the animal control officer and volunteer director of emergency management, with assistance from a number of part-time (primarily volunteer) harbor patrol officers, as well as state fish and game officers. The Police Department operates with roving patrols of

typically three, occasionally four officers per shift. Average response time to an emergency dispatched call is approximately four minutes throughout town.

Police Department headquarters is located south of Route 24 at Fish Road, in a 30 year old wooden frame single story slab building that is in need of infrastructure upgrades and lacks adequate storage space for police records (which are kept in a non climate controlled metal storage unit behind the building). A previous grant enabled the department to upgrade its computer system, and in 2004, the communications system was centralized and enhanced to accommodate all emergency services, including police, fire and ambulance. In the future, the town should consider construction of a combination police/fire complex. The public safety complex should be centrally located in town on a parcel not less than seven acres to accommodate both departments' staff and parking needs.

The Police Department is committed to the concept of community policing and community involvement. It plans to continue its ongoing drug and alcohol education program in the schools, and to assist in neighborhood watch programs. Federal, state, and homeland security grants are actively sought, as is donated equipment.

The police station is currently adequate but needs serious expansion and upgrading. The police chief says that he needs less than 25,000 square feet of new space. It would cost about \$200 per square foot to build a new space.

E. Public Works Garage

The Public Works Department has a staff of 12 people. It is charged with maintaining the town owned roads including snow removal, street sweeping, roadside mowing, catch basin cleaning and sign maintenance, as well as the town landfill operation, and the repair and maintenance of town buildings other than those used by the School Department. Municipal solid waste collection is contracted out, though the Public Works Department collects certain large metal objects with its own equipment.

In order to provide better service, a new facility with administrative space and a repair shop garage would be needed.

F. Open Space and Recreation Facilities

The Town's Comprehensive Plan calls for the protection of open space and coastal resources, including recreational opportunities. Its stated objectives are:⁷

- Pursue open space acquisition within a comprehensive strategy that establishes criteria and priorities, accounts for the differing needs and opportunities of the various regions of the town, and coordinates the efforts of both public and private entities.
- Protect Tiverton's farmland as valuable open space, as part of the town's cultural heritage, and as an important economic activity.
- Improve the quality and delivery of recreational programs and facilities.
- Update the Tiverton Recreation, Conservation and Open Space Plan along with a long-range capital program for its implementation.

⁷ *Tiverton Comprehensive Plan*, 2006, Page 137.

The Parks and Recreation Commission is preparing a master plan for land acquisition which will need to be incorporated into the comprehensive plan. It calls for new park space, upgraded facilities. State reimbursement will be at 50% of acquisition cost.

4. PROPOSED IMPACT FEE

This Impact Fee Needs Assessment identified six capital facilities of which four or five are eligible for impact fees. Schools are definitely eligible for impact fees. When better land acquisition and/or construction costs are available for library, fire station, and open space/recreation facilities, they can be added to the impact fee schedule. It is not likely that currently projected costs for police station and public works garage would be eligible. In this phase, the only identified cost is \$21,490,000 for schools.

A. Growth of Residential Uses

The town's average persons per household declined from 2.94 in 1980 to 2.69 in 1990, and declined again to 2.51 in 2000. Note: the number of households varies from the number of household units counted in the Census because of a number of vacant and seasonal or recreational units.⁸

In terms of residential growth, the Town has been growing at an average of 78 units every year since 1998-1999. The 2000 Census reports that the Town had 6,077 occupied dwelling units. By fiscal year 2006/2007 this would have grown to 6,708 units, based on a schedule of all building permits issued from FY 1999 to 2007.⁹

Impact fees can only be applied going forward; retroactive application of fees is not permitted. In order to determine what that fee should be going forward, it is necessary to project the number household units into the future over the next ten years.

The Town has issued a low of about 26 to a high of 153 dwelling units from FY 1999 to 2007. While it is impossible to project with absolute certainty how many permits will be issued over the next ten years, the last nine years worth of permits indicates an average of 78 units per year. Given that scenario, it is expected that there will be about 7,488 dwelling units by 2017. But not all these units have an impact on the school's infrastructure; only the single family owner occupied units can be counted towards the impact fee. The 2000 Census indicated that 79.9% of all occupied dwelling units were owner occupied. Therefore, 79.9% of the projected 7,488 dwelling units, or 5,981 units will likely be single family owner occupied units in 2017.

Even though a capital expense of almost \$21.5 Million will be bonded over thirty years or more, ten years is the recommended starting point for calculating the fee, which must be monitored each year and updated in five year increments.

For the purposes of calculating the impact fee, the 5,981 units in 2017 will be used.

B. Impact Fee Calculation

Based on the foregoing, the following factors went into the calculation:

⁸ Ibid. Page 11.

⁹ See Table 3.

1. Since schools represent the highest single capital cost that the Town faces, 100% of the cost will be attributed to single family residential growth.
2. The actual fee per residential dwelling unit is calculated by dividing the projected 5,981 owner occupied dwelling units into \$21,490,000 cost for schools.
3. The Town will assess a one time fee of \$3,593 per single family, duplex, and multiple family dwellings with more than one (1) bedroom unit (with exemptions identified in the ordinance).

C. Phasing

In terms of phasing in the fees, it is recommended that the Town Council impose the fees for capital outlays for school costs alone. As future costs become known, this report can be updated to add additional fees.

5. PROPOSED IMPACT FEE ORDINANCE

ORDINANCE XXX

An Ordinance Adopting and Enacting Impact Fees within the Town of Tiverton.

WHEREAS, the Tiverton Comprehensive Community Plan supports growth management and impact fees and

WHEREAS, the Town Council of the Town of Tiverton has entered upon such a growth management program in the Town, and

WHEREAS, the Town Council of the Town of Tiverton has determined that costs associated with growth create unfair burdens on existing taxpayers, and

WHEREAS, the Town Council of the Town of Tiverton has determined that a program of impact fees is consistent with the Town of Tiverton's Comprehensive Plan, its Zoning Ordinance, and State enabling acts relative thereto,

NOW, THEREFORE, the Town Council of the Town of Tiverton does hereby ordain as follows:

Section 1. Impact Fees Authorized.

This Article authorizes the establishment of an impact fee on land development in Tiverton for providing new and/or expanded capital facilities within Tiverton which are necessitated by such new development.

Section 2. Findings.

- A) In accordance with RIGL Title 45 Chapter 45-22.4, the Town Council finds that an equitable program is needed for the planning and financing of public facilities to serve new growth and development in the Town of Tiverton in order to protect the public health, safety and general welfare of the citizens of this Town.
- B) It is therefore the public policy of the Town and in the public interest to assess, impose, levy and collect fees defined herein as impact fees for certain new development within the Town's jurisdictional limits.
- C) It is the intent of the Town Council by enactment of this amendment to:
 - 1) Ensure that adequate public facilities are available to serve new growth and development;
 - 2) Ensure that new growth and development does not place an undue financial burden upon existing taxpayers;
 - 3) Promote orderly growth and development by establishing uniform standards to require that those who benefit from new growth and development pay a proportionate fair share of the cost of new and/or upgraded public facilities needed to serve that new growth and development;
- D) The Town of Tiverton must improve and expand its public facilities in order to maintain current levels of service if new development is to be accommodated without de-

creasing current levels of service. This must be done in order to promote and protect the public health, safety, and welfare of current and future citizens;

- E) The State of Rhode Island through the enactment of Rhode Island Comprehensive Planning Act of 1988 and the Zoning Enabling Act of 1991 (RIGL Sec. 45-24-30) has sought to encourage Tiverton to enact innovative development regulations and techniques. Title 45 Chapter 45-22.4 specifically enables the Town Council to adopt impact fee ordinances.
- F) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety, and welfare.
- G) The fees established by this article are derived from, based upon, and do not exceed the costs of providing for such facilities necessitated by new land developments for which the fees are levied. Such costs are established by the Town's Needs Assessment, including the Tiverton Elementary School Facilities Comprehensive Study.
- H) The report entitled "Town of Tiverton, Rhode Island, Growth Management – Needs Assessment for Impact Fee Schedule and Ordinance," dated _____, sets forth a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs of facilities in Tiverton.

Section 3 Intent

- A) The fees established by this Article are consistent with and are intended to assist in the implementation of the Tiverton Comprehensive Plan.
- B) The purpose of this Article is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide public educational sites and facilities, as mandated by the State.

Section 4 Definitions

As used in this section, the following words have the meanings stated in this section:

- A) "Capital improvements" means improvements with a useful life of ten (10) years or more, which increases or improves the service capacity of a public facility;
- B) "Capital improvement program" means that component of the Town's budget or the school district's master plan that sets out the need for public facility capital improvements for educational facilities, the costs of the improvements, and proposed funding sources. A capital improvement program must cover at least a five (5) year period and should be reviewed at least every five (5) years;
- C) "Developer" means a person or legal entity undertaking development, including any one person commencing a subdivision or land development project which may reasonably be expected to place students in the public schools, place additional burdens on the Town's educational facilities and which requires the issuance of a building permit for one or more residential buildings;

- D) "Impact fee" means the charge imposed upon new development by the Town of Tiverton to fund all or a portion of the public facility's capital improvements affected by the new development from which it is collected;
- E) "Proportionate share" means that portion of the cost of system improvements which reasonably relates to the service demands and needs of the project; and
- F) "Public facilities" means:
 - 1) Roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and local components of state and federal highways;
 - 2) Storm water collection, retention, detention, treatment, and disposal facilities, flood control facilities, bank and shore projections, and enhancement improvements;
 - 3) Parks, open space areas, and recreation facilities;
 - 4) Police, emergency medical, rescue, and fire protection facilities;
 - 5) Public schools, including those capital projects undertaken by the Town school district to accommodate existing and future Tiverton school-age pupils. Such facilities may be located within Tiverton; and
 - 6) Other public facilities consistent with a community's capital improvement program.
- G) Capital costs of public facilities are expenditures for the acquisition of fixed assets or additions to fixed assets and expenditures for site acquisition, construction, design, site development, necessary off-site improvements, capital equipment pertaining to such facilities, and debt service to finance such capital costs.
- H) "Independent fee calculation study" means the demographic and/or capital facilities impact documentation prepared by a fee payer to allow the determination of the impact fee other than by the method established by this ordinance.

Section 5 Imposition of Public Facilities Impact Fee

- A) Any person applying, after the effective date of this ordinance, for any building permit which adds one or more new single family, duplex, or multiple family dwellings with more than one (1) bedroom is hereby required to pay a public facilities impact fee in the manner and amount set forth in this ordinance. Additions and remodeling do not require an impact fee.
- B) The requirement of funds for provision of public facilities shall be based upon needs as established by the Needs Assessment and shall be consistent with the policies stated therein. The Building Official is charged with the administration of the section.
- C) A fee schedule per residential dwelling unit shall be established by the Town Council in the Needs Assessment for the fiscal year, which may amended from year to year, based on the Town's needs.
- D) The fee payer is required to pay the fee as established annually by the Town Council. If a fee payer disputes the impact fee determined as described herein, then the fee

payer may appeal the decision of the Building Official to the Zoning Board of Review in accordance the Zoning Ordinance and may submit an independent fee calculation study for the land development activity for which a building permit is sought.

Section 6 Calculation of the Impact Fee

The impact fee is set forth in Section 4B of the Needs Assessment report and shall be the required methodology in this ordinance.

Section 7 Payment of Fee

The fee payer shall be assessed the facilities impact fee required by this ordinance upon application for a building permit, to the Building Official and shall be collected in full prior to the issuance of Certificate of Occupancy.

Section 8 Capital Facilities Impact Fee Proprietary Fund Established

- A) There is hereby established a separate capital facilities impact fee proprietary fund to be administered by the Town Treasurer, pursuant RIGL Section 45-22.4-5 (a) (1). All funds collected shall be properly identified and promptly deposited in this special proprietary fund, which shall be invested in government insured or government backed instruments only with all interest accruing to the proprietary fund and used solely for the purposes specified in this ordinance.
- B) Within eight (8) years of the date of collection, impact fees shall be expended or encumbered for the construction of public facilities capital improvements of reasonable benefit to the development paying the fees and that are consistent with the capital improvement program. The construction, expansion or renovation of new school facilities anywhere in the town or in any regional school district shall be deemed to be such reasonable benefit.
- C) Where the expenditure or encumbrance of fees is not feasible within eight (8) years, the Town may retain impact fees for a longer period of time if there are compelling reasons for the longer period. In no case shall impact fees be retained longer than twelve (12) years.
- D) Funds withdrawn from this account must be used in accordance with the provisions of Section 9 of this ordinance.

Section 9 Use of Funds

- A) Funds collected from capital facilities impact fees and deposited in the capital facilities impact fee proprietary fund by the Town Treasurer are for the purpose of constructing such facilities as described in the Needs Assessment report. Such funds shall be spent solely to acquire, construct, expand, and equip the capital facilities identified in the report.
- B) Funds may be used to make refunds required by Section 11 of this ordinance.

Section 10 Vested Rights

Any application for a building permit (not foundation permit) that has been submitted and has been deemed complete prior to the adoption of this Ordinance, shall have vested

rights to proceed with the application and receive a building permit or CO without requiring the payment of an impact fee.

Section 11 Refund of Fees Paid

- A) Any funds not expended or encumbered by the end of the calendar quarter immediately following eight (8) years, or twelve (12) years if Section 8 C) of this Ordinance applies, from the date the capital facilities impact fee was paid, shall be refunded to the current owner of record for the Assessor's Plat and Lot for which the fee was paid. The refund shall include interest on the original fee amount, equal only to the actual interest that the Town Treasurer may have accrued through an investment account or similar interest bearing account.
- B) The Town shall notify the said current owner of record by certified letter, return receipt requested, that a refund of impact fees is due for the reasons provided in Section 11 (A). Said current owner of record may respond and submit an application for a refund to the Building Official within one (1) year from the date of receipt of the Town's notice. Failure to respond within the specified time period shall indicate a waiver for such refund.
- C) If the Town Council were to act to terminate any or all impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided above. Upon the finding that any or all fee requirements are to be terminated, the Town shall place a notice of termination and availability of refunds in a newspaper of general circulation within the Town of Tiverton at least two (2) times. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the general fund and used for any public purpose. The Town is released from this notice requirement if there are no unexpended or unencumbered balances within a fund or funds being terminated.

Section 12 Exemptions

The following shall be exempted from payment of the impact fee. Any claim of exemption must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

- A) Impact fees shall not be imposed for remodeling, rehabilitation, or other improvements to an existing structure where the use is not changed.
- B) Impact fees shall not be imposed for the construction of accessory buildings or structures which will not add a dwelling unit.
- C) Impact fees shall not be imposed for rebuilding a damaged structure, including the replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use.
- D) Any new housing units that meet the definition of "Affordable Housing" by Rhode Island Housing
- E) Any units that provide housing to persons over the age of 55 are exempt from school related impact fees, but are subject to all other municipal capital impact fees.

Section 13 Effective Date

Following the adoption of this ordinance, the impact fee as provided above, and shall take effect on _____.

Applications submitted and accepted as complete before _____ shall not be subject to this amendment. This Ordinance shall supersede any and all ordinances inconsistent herewith.

Appendix A

TITLE 45

CHAPTER 45-22.4 Rhode Island Development Impact Fee Act

§ 45-22.4-1 Title. – Chapter 22.4 of this title shall be known as the "Rhode Island Development Impact Fee Act".

§ 45-22.4-2 Legislative findings and intent. – (a) Whereas, the General Assembly finds that an equitable program is needed for the planning and financing of public facilities to serve new growth and development in the cities and towns in order to protect the public health, safety and general welfare of the citizens of this state.

(b) Whereas, it is therefore the public policy of the state and in the public interest that cities and towns are authorized to assess, impose, levy and collect fees defined herein as impact fees for all new development within their jurisdictional limits.

(c) Whereas, it is the intent of the General Assembly by enactment of this act to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Ensure that new growth and development does not place an undue financial burden upon existing taxpayers;

(3) Promote orderly growth and development by establishing uniform standards for local governments to require that those who benefit from new growth and development pay a proportionate fair share of the cost of new and/or upgraded public facilities needed to serve that new growth and development;

(4) Establish standards for the adoption of development impact fee ordinances by governmental entities;

(5) Empower governmental entities which are authorized to adopt ordinances to impose development impact fees.

§ 45-22.4-3 Definitions. – As used in this chapter, the following words have the meanings stated in this section:

(1) "Capital improvements" means improvements with a useful life of ten (10) years or more, which increases or improves the service capacity of a public facility;

(2) "Capital improvement program" means that component of a municipal budget that sets out the need for public facility capital improvements, the costs of the improvements, and proposed funding sources. A capital improvement program must cover at least a five (5) year period and should be reviewed at least every five (5) years;

(3) "Developer" means a person or legal entity undertaking development;

(4) "Governmental entity" means a unit of local government;

(5) "Impact fee" means the charge imposed upon new development by a governmental entity to fund all or a portion of the public facility's capital improvements affected by the new development from which it is collected;

(6) "Proportionate share" means that portion of the cost of system improvements which reasonably relates to the service demands and needs of the project; and

(7) "Public facilities" means:

(i) Water supply production, treatment, storage, and distribution facilities;

(ii) Wastewater and solid waste collection, treatment, and disposal facilities;

(iii) Roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and local components of state and federal highways;

(iv) Storm water collection, retention, detention, treatment, and disposal facilities, flood control facilities, bank and shore projections, and enhancement improvements;

(v) Parks, open space areas, and recreation facilities;

- (vi) Police, emergency medical, rescue, and fire protection facilities;
- (vii) Public schools and libraries; and
- (viii) Other public facilities consistent with a community's capital improvement program.

§ 45-22.4-4 Calculation of impact fees. – (a) The governmental entity considering the adoption of impact fees shall conduct a needs assessment for the type of public facility or public facilities for which impact fees are to be levied. The needs assessment shall identify levels of service standards, projected public facilities capital improvements needs, and distinguish existing needs and deficiencies from future needs. The findings of this document shall be adopted by the local governmental entity.

(b) The data sources and methodology upon which needs assessments and impact fees are based shall be made available to the public upon request.

(c) The amount of each impact fee imposed shall be based upon actual cost of public facility expansion or improvements, or reasonable estimates of the cost, to be incurred by the governmental entity as a result of new development. The calculation of each impact fee shall be in accordance with generally accepted accounting principles.

(d) An impact fee shall meet the following requirements:

(1) The amount of the fee must be reasonably related to or reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the development; and

(2) The impact fees imposed must not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors shall be considered in determining a proportionate share of public facilities capital improvement costs:

(i) The need for public facilities' capital improvements required to serve new development, based on a capital improvements program that shows deficiencies in capital facilities serving existing development, and the means, other than impact fees, by which any existing deficiencies will be eliminated within a reasonable period of time, and that shows additional demands anticipated to be placed on specified capital facilities by new development; and

(ii) The extent to which new development is required to contribute to the cost of system improvements in the future.

§ 45-22.4-5 Collection and expenditure of impact fees. – (a) The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the fees. The ordinance may consider the following requirements:

(1) Upon collection, impact fees must be deposited in a special proprietary fund, which shall be invested with all interest accruing to the trust fund;

(2) Within eight (8) years of the date of collection, impact fees shall be expended or encumbered for the construction of public facilities' capital improvements of reasonable benefit to the development paying the fees and that are consistent with the capital improvement program;

(3) Where the expenditure or encumbrance of fees is not feasible within eight (8) years, the governmental entity may retain impact fees for a longer period of time if there are compelling reasons for the longer period. In no case shall impact fees be retained longer than twelve (12) years.

(b) All impact fees imposed pursuant to the authority granted in this chapter shall be assessed upon the issuance of a building permit or other appropriate permission to proceed with development and collected in full upon to the issuance of certificate of occupancy or other final action authorizing the intended use of a structure. Nothing contained in this chapter shall prevent a municipality from continuing to assess and/or collect an impact fee at an earlier time so long as the municipality does so pursuant to an ordinance enacted at least ninety (90) days prior to the effective date of this chapter [July 22, 2000].

(c) A governmental entity may recoup costs of excess capacity in existing capital facilities, where the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented by a preconstruction assessment that demonstrated the need for the excess capacity. Nothing contained in this chapter shall prevent a municipality from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility without the preconstruction assessment so long as the impact fee was enacted at least ninety (90) days prior to the effective date of this chapter [July 22, 2000] and is in compliance with this chapter in all other respects pursuant to § 45-22.4-7. The fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of

the costs to provide the excess capacity. That portion of an impact fee deemed recoupment is exempted from provisions of § 45-22.4-5(a)(2).

(d) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees provided that:

(1) The need for the dedication or construction is clearly documented in the community's capital improvement program or comprehensive plan;

(2) The land proposed for dedication for the facilities to be constructed are determined to be appropriate for the proposed use by the local governmental entity;

(3) Formulas and/or procedures for determining the worth of proposed dedications or constructions are established.

(e) Exemptions: Impact fees shall not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure, unless there is an increase in the number of dwelling units or any other measurable unit for which an impact fee is collected. Impact fees may be imposed when property which is owned or controlled by federal or state government is converted to private ownership or control.

(e) (1) Impact fees shall not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure, unless there is an increase in the number of dwelling units or any other measurable unit for which an impact fee is collected. Impact fees may be imposed when property which is owned or controlled by federal or state government is converted to private ownership or control.

(2) Nothing in this chapter shall prevent a municipality from granting any exemption(s) which it deems appropriate.

§ 45-22.4-6 Refund of impact fees. – (a) If impact fees are not expended or encumbered within the period established in § 45-22.4-5, the governmental entity shall refund to the fee payer or his or her successors the amount of the fee paid and accrued interest. The governmental entity shall send the refund to the fee payer at the last known address by certified mail within one year of the date on which the right to claim refund arises. All refunds due and not claimed within one year shall be retained by the municipality.

(b) When a governmental entity seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided above. Upon the finding that any or all fee requirements are to be terminated, the governmental entity shall place a notice of termination and availability of refunds in a newspaper of general circulation in the community at least two (2) times. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the general fund and used for any public purpose. A governmental entity is released from this notice requirement if there are no unexpended or unencumbered balances within a fund or funds being terminated.

§ 45-22.4-7 Compliance. – No later than two (2) years after the effective date of this chapter [July 22, 2000], governmental entities shall conform all impact fee ordinances existing on the effective date of this act [July 22, 2000] to the provisions of this chapter.

§ 45-22.4-8 Adoption of impact fees. – Impact fees shall be adopted by ordinance and the adoption of an impact fee ordinance or amendment to that ordinance shall be by affirmative vote of not less than a majority of the total membership of the governing body in attendance at the meeting, in the manner prescribed by law.

§ 45-22.4-9 Severability. – If any portion of this chapter or any rule, regulation, or determination made under this chapter, or the application of this chapter to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of this chapter, rule, regulation, or determination and the application of those provisions to other persons, agencies, or circumstances shall not be affected. The invalidity of any section or sections, or parts of any section or sections of this chapter, shall not affect the validity of the remainder of this chapter.